

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 11-CR-303(NGG)

-against- : United States Courthouse
: Brooklyn, New York

GERALDO ELAINOR, : Friday, July 18, 2014
: Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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1 COURTROOM DEPUTY: Criminal cause for sentencing.

2 MS. MACE: Afternoon Your Honor, Kristine Mace and
3 Maggie Lee for the United States.

4 MR. BRANDEN: Jim Branden for the defendant, Mr.
5 Elainor. Afternoon.

6 THE COURT: Afternoon, Mr. Branden; afternoon, sir.

7 THE DEFENDANT: Afternoon, sir.

8 THE COURT: This is a sentencing for Mr. Elainor.

9 Mr. Elainor are you satisfied with the assistance
10 that your attorney has given you thus far in this matter?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I have the following materials that are
13 part of the-- that I have reviewed in connection with the
14 sentencing. They constitutes the sentencing file.

15 There is a presentence investigation report that was
16 prepared June 19th, 2014, and an addendum to the report that
17 was transmitted to the Court on July 17th, addressing Mr.
18 Branden's objections to the presentence report in his letter
19 dated --

20 MR. BRANDEN: July 15th was my letter, Judge.

21 THE COURT: July 15th, 2014.

22 Mr. Branden, have you shared the presentence report
23 with your client?

24 MR. BRANDEN: Yes, I have.

25 THE COURT: Is he aware of the addendum as well?

1 MR. BRANDEN: He is aware of it.

2 MS. MACE: There is a letter from the government,
3 Your Honor.

4 THE COURT: I'm getting there. I am not there yet.
5 Don't jump the gun on this.

6 There is a-- you have seen the presentence report
7 and the addendum, correct?

8 MS. MACE: Yes, Judge, yes.

9 THE COURT: And also, there is a letter from the
10 government dated July 15th, 2014.

11 Have you seen that, Mr. Branden?

12 MR. BRANDEN: Yes, Judge.

13 THE COURT: And, is your client aware of that?

14 MR. BRANDEN: I have not read this to him, but he is
15 now aware of it and he can read, what I believe to be the most
16 relevant part, which is the only new information contained in
17 this, which is this paragraph which I will show him right now.

18 THE COURT: Okay.

19 (Pause.)

20 MR. BRANDEN: He has reviewed that, Judge, thank
21 you.

22 THE COURT: Thank you.

23 I think that covers it. That is-- nothing else is
24 there.

25 MS. MACE: The only other thing relevant to

1 sentencing which is the plea agreement, which we did send a
2 copy to the Court.

3 THE COURT: I have that. I wasn't there.

4 MS. MACE: You were, since it was a 11(c)(1)(C)
5 plea, it is particularly relevant to sentencing.

6 THE COURT: Yes. I'm well aware of it. I think I
7 even said at the time that the Court was agreeable to
8 accepting a 11(c)(1)(C) plea.

9 MS. MACE: Thank you.

10 THE COURT: A 11(c)(1)(C) plea is a plea to a
11 designated agreed to term of imprisonment; is that right?

12 MS. MACE: Yes.

13 THE COURT: In this case, the term of imprisonment
14 that has been agreed to for the two crimes Counts 1 and 7, is
15 300 months in the custody of the Attorney General; is that
16 correct?

17 MS. MACE: Yes.

18 MR. BRANDEN: That's correct.

19 THE COURT: We are going to go through the process
20 obviously of ascertaining the guideline and so forth, as I am
21 required to do by case law. All right.

22 MR. BRANDEN: Judge, I have never appeared on a
23 11(c)(1)(C) sentencing before. I know that I raised various
24 issues with regard to the guidelines.

25 THE COURT: Yes.

1 MR. BRANDEN: There are two I think that would
2 really matter if this were not a 11(c)(1)(C).

3 THE COURT: Let's talk about them anyway.

4 MR. BRANDEN: Okay.

5 THE COURT: Go ahead.

6 MR. BRANDEN: The first is whether or not the base
7 offense level should be 43 as set forth in paragraph 25 of the
8 presentence report, or whether it should be level 38
9 corresponding to second degree murder. The facts in the case
10 are not that Mr. Elainor always sought to kill Anthony Thomas.
11 The event of that evening came up very very quickly, Anthony
12 Thomas passed through the Ebbets Field turf so to speak over
13 the Six Tre group and after many drinks from the defendant, on
14 a very fast decision he decided to shoot.

15 So to me having had this come up in other
16 circumstances, usually it is my experience that that is a
17 second degree murder, not a first degree murder. That is the
18 basis of the objection.

19 I have nothing more to add, other than what I have
20 just told you. I think you can make a legal determination.

21 THE COURT: From the government?

22 MS. MACE: In the addendum to the presentence
23 report, the Probation Department did comment on this one and
24 set forth the reasons that the Probation Department believes
25 it is appropriate to categorize this as first degree murder

1 and the government joins in that reasoning.

2 We believe that this was premeditated. It was not
3 maybe lengthy meditation before the killing. It is sufficient
4 to meet the legal requirement.

5 So, for those reasons and the reasons laid out in
6 more detail in the addendum to the presentence report, I think
7 the calculation in the PSR is correct.

8 THE COURT: All right. I am going to agree with the
9 Probation Department that the base offense level 43 is the
10 appropriate offense level under the circumstances.

11 Now, next?

12 MR. BRANDEN: Next concerns the defendant's criminal
13 history category.

14 THE COURT: Yes.

15 MR. BRANDEN: It is submitted that Mr. Elainor
16 having been jumped into the Six Tre Folk Nation group when he
17 was 15 years old, was always a member of that group throughout
18 his criminal history.

19 So that the two prior robberies that he got-- that
20 he has been convicted of when he was 18 years old, those
21 should be deemed part of the instant offense, and were that
22 so, he would not be a career offender.

23 THE COURT: Let me hear from the government.

24 MS. MACE: Once again, the Probation Department has
25 given its position on this, and I believe they are correct. I

1 think if what Mr. Branden said were true, then there would be
2 further changes to the guidelines calculation, because then
3 all of that other conduct would be considered relevant conduct
4 and would have to be calculated as well. I have not done the
5 math to see how that would play out, if it would-- how
6 different it would be.

7 But, the --

8 MR. BRANDEN: It was a cellphone and \$1,000. So I
9 don't think it would effect it at all.

10 MS. MACE: Well, I will leave it at that. I have
11 nothing to add from the analysis from the Probation
12 Department.

13 THE COURT: Well, I believe I-- I have reviewed this
14 and I believe the PSR is correct. If you look at the
15 commentary note four to section 2E 1.1 of the sentencing
16 guidelines, it states that prior convictions charged as
17 predicate acts for RICO, maybe included in calculating
18 criminal history. As such, the defendant's prior convictions
19 which are not mentioned in the indictment should be included
20 in the criminal historical calculation.

21 So, I'm going to follow the Probation Department's
22 recommendation. Therefore, the defendant has a total offense
23 level of 40. He has a criminal history category of six
24 because as-- he is a career offender and his guidelines is
25 480 months to life under the guidelines.

1 MS. MACE: We believe that is correct.

2 THE COURT: And you object to that?

3 MR. BRANDEN: Correct.

4 THE COURT: Your objection is noted.

5 But, it basically doesn't have any effect on the
6 sentence that I'm going to render here, because there is an
7 agreement as to the length of the sentence on the part of the
8 parties, correct?

9 MR. BRANDEN: Correct.

10 MS. MACE: Yes.

11 THE COURT: Now, the defendant is subject to a
12 10-year minimum separate-- a consecutive sentence.

13 MR. BRANDEN: Correct. So in order to effectuate
14 what you want to do, you need to put 180 and 120.

15 THE COURT: Yes, sir.

16 MR. BRANDEN: If the math is correct.

17 THE COURT: I think your math is impeccable.

18 MR. BRANDEN: Thank you, Judge.

19 THE COURT: So, what I would like to do now is hear
20 from the parties briefly. I know that the defendant's family
21 is here and I know that this is extremely troubling and
22 serious to the family. Some of these crimes took place when
23 the defendant was even younger than he is now, much.

24 How old are you now?

25 THE DEFENDANT: 24.

1 THE COURT: And I'm sure he wishes it hadn't
2 happened the way it happened and what happened, but I need to
3 hear from the parties briefly, as to the appropriateness of
4 the sentence that is being sought by an agreement of the
5 parties.

6 MS. MACE: Yes, Judge.

7 Also I would like to note at the outset there are
8 members of the victim's family who are here as well. Several
9 members.

10 THE COURT: Do they want to speak?

11 MS. MACE: Yes, and there are three members of his
12 family who wish to speak. I think each briefly.

13 The victim's father, Matthew Thomas wishes to speak;
14 the victim's sister, Angela Settles would like to speak; and
15 Judith Rodriguez, who shares two children with the victim is
16 here and she-- with her children, and she would like to speak
17 as well.

18 THE COURT: Why don't we start with --

19 MS. MACE: Mr. Thomas, the victim's father.

20 THE COURT: Yes, the victim's father.

21 Would you please come forward, sir.

22 Why you don't you stand next over here next to the
23 government's attorneys.

24 MR. THOMAS: Afternoon, sir.

25 THE COURT: Tell me your name.

1 MR. THOMAS: Matthew Thomas.

2 THE COURT: What would you like to say?

3 MR. THOMAS: I am Anthony's father, okay.

4 You know I hear he is getting 25, little quick, you
5 know.

6 Your Honor, I don't think 25 is strong enough all
7 right. Me myself-- excuse me.

8 MS. MACE: Take your time.

9 MR. THOMAS: Still having problems dealing with his
10 loss, okay. He was no good guy, but he was no bad guy. He
11 didn't even hang in the neighborhood, okay. He was on parole
12 all right. He had asked his parole officers could, you know,
13 cause they-- how do you call that, recommend he be at the
14 house for checkups, you know. He asked them, could he go down
15 south and, you know, deal with it down there. Could he move
16 further across town and deal with it.

17 To me I kind of like blame them a little bit for it
18 because he did ask for this. Okay. And to top that all off,
19 two days afterwards, they show up at the house, they want a
20 bed check, all right.

21 Young man, why? Can you answer that question for
22 me. He was my only son, you know. His mother passed away. I
23 can't get no more sons.

24 THE COURT: Okay. Thank you, sir.

25 MR. THOMAS: Thank you.

1 MS. MACE: Ms. Settles is the victim's sister, she
2 would like to speak.

3 THE COURT: Ms. Settles.

4 MS. MACE: She went to the rest room.

5 THE COURT: Why don't we take the next person.

6 MS. MACE: Ms. Rodriguez. As I said, she shares two
7 children with the victim and her children are here as well.

8 THE COURT: Ms. Rodriguez, please come forward.

9 Yes, ma'am, state your.

10 MR. RODRIGUEZ: Judith Rodriguez.

11 THE COURT: Yes, what would you like to say.

12 MR. RODRIGUEZ: I have two daughters with Anthony
13 Thomas. To have to explain to children who just seen their
14 father not too long ago, that you will never see your father
15 again, is the worst. I am currently planning a sweet sixteen
16 and there is no father daughter dance. My daughter now sees a
17 psychotherapist because she hasn't been able to deal with
18 this. They constantly ask for their father. They know what
19 happened, but they were young and to have-- it is a difference
20 between having a parent taken away from a disease, or
21 something natural. But to have your father taken away just
22 taken is terrible.

23 And my children have to deal with that for the rest
24 of their lives. They have to go by old pictures, old
25 memories. I have to remind them about their dad and it is not

1 right. It is not fair to them, and I'm their voice.

2 I feel the weight, yes, but at the end of the day,
3 it is about my children and they don't have anybody that they
4 can turn to. They don't have-- they don't have that father
5 figure. So that is what I really want to say.

6 THE COURT: I appreciate it.

7 I'm very sorry for your loss.

8 MR. RODRIGUEZ: Thank you.

9 THE COURT: And the same is true for Mr. Thomas who
10 spoke already. Please, I'm very sorry for his loss as well.

11 MR. THOMAS: Thank you.

12 MS. MACE: Ms. Settles is Mr. Thomas' sister.

13 THE COURT: Ms. Settles.

14 Good afternoon, ma'am.

15 MS. SETTLES: Afternoon.

16 THE COURT: Please state your full name.

17 MS. SETTLES: Angela Settles.

18 THE COURT: Yes, ma'am, what would you like to say.

19 MS. SETTLES: I would like to say that this is
20 horrible. It has really impacted my family tremendously.

21 The loss is undescribable, and it is not fair that
22 this young man will be able to have possibilities where my
23 brother has none any more. All of those are gone, all of
24 them. Your family has the luxury, they get phone calls,
25 visits, you can get an education. You can get married. You

1 can have children. Those are no longer an option for Anthony.

2 I will never have another niece, a nephew, I will
3 not see my brother marry. I won't get a phone call. I don't
4 have a visit besides a grave site. I don't have-- I can have
5 a conversation, but I won't get an answer. His family has
6 that luxury, and we don't. We don't. Possibilities of
7 parole, my brother doesn't have a possibility of coming home.
8 It is not fair.

9 It is not fair, it is not fair.

10 THE COURT: Thank you.

11 MS. MACE: Thank you.

12 THE COURT: All right. Does the government have any
13 statement to make regarding the appropriateness of the
14 sentence?

15 MS. MACE: Judge, we will rely on our papers. I do
16 just want to note that there has been very touching, you know,
17 statements from the victim's family and I think that the
18 feeling that 25 years is not enough. I'm sympathetic to that
19 and I know a loss is felt very deeply, and to a family, who
20 has lost someone, it seems like it is insufficient.

21 But, there are reasons I think in this case to go
22 below the guideline range, and that is why the government has
23 agreed to the agreement that we have.

24 The defendant was extremely young when he began his
25 participation in this enterprise. That is not an excuse, but

1 it is part of the tragedy of this case, I think.

2 The crimes are truly horrible. But he was so young
3 and I think there is the possibility that there can be
4 rehabilitation in this case. That is our hope.

5 So we think a sentence of 300 months is appropriate
6 here.

7 THE COURT: There is someone standing in the back, I
8 don't know is that a member of the victim's family?

9 MS. MACE: That is the victim representative from
10 the U.S. Attorney's office. May I speak with her for a
11 moment.

12 (Pause.)

13 MS. MACE: I have been informed that Mr. Thomas, the
14 victim's father has requested an opportunity to say one more
15 thing to Your Honor. I don't know what it meant, he has asked
16 for that chance.

17 THE COURT: Yes, Mr. Thomas, come on up.

18 Yes, sir.

19 MR. THOMAS: Thank you for hearing me again.

20 THE COURT: Surely.

21 MR. THOMAS: You know the worst part about this, you
22 know like, I had my youngest daughter and my grand kids
23 staying with us, okay. A couple of days after this happened,
24 It was a threat, all right. And we had to relocate because of
25 it. It was like, you know, like I work, they were home. But

1 rumor got around, if my kids or grand kids were out in the
2 courtyard, the same thing could happen to them.

3 Behind that, I had to move. You see, young man, you
4 didn't only take my son, you took where I live. We never
5 bothered nobody where we lived. Everybody know me, know the
6 kids. You devastated. You totally messed me up. I never get
7 over this. I don't-- have a good one.

8 THE COURT: I'm very sorry for your loss, sir.

9 MR. THOMAS: Thank you for hearing me.

10 THE COURT: That is quite all right.

11 Mr. Branden, anything else?

12 MR. BRANDEN: Judge, I frankly don't have too much
13 to say. It is tragic, it is. I agree with what the
14 government has said about the victim, I agree what the
15 government has said about the victim's family.

16 Gang activity has resulted in so many losses, it is
17 not just here, but it is what the government is trying to get
18 at by bringing these prosecutions.

19 But on the other hand, 25 years is an extremely long
20 period of time to be in jail, especially for somebody who
21 never served a lengthy, I don't think an upstate term
22 previously. Although he might have done a year, I take that
23 back.

24 I do think there is a hope for rehabilitation here.

25 He is a perfectly pleasant individual. He has been a very

1 cooperative defendant. He has tried to hold as many
2 codefendant meetings as possible, to get others to see the
3 light and wisdom of taking the plea. I think others down the
4 line would credit him for that, and I think there will be
5 others down the line resolving their cases short of a trial.

6 He too has had a very difficult childhood. He was
7 young at the time. All those factors go into why this
8 11(c)(1)(C) plea was entered and I just don't have anything
9 more to say to that.

10 THE COURT: Okay.

11 Mr. Elainor, is there anything you would like to say
12 before I sentence you, sir?

13 THE DEFENDANT: Yes, Your Honor.

14 Just really truly, I would like to apologize to the
15 family, because at the end of the day, it was a senseless
16 murder. It just -- he didn't deserve that. Because nobody
17 deserves to lose a love one. So I do feel their pain and
18 their suffering through what they are going through.

19 I truly do apologize.

20 THE COURT: Very well.

21 I have considered the agreement between the
22 government and the defense. I think it is a reasonable
23 agreement, as I have said previously.

24 I have considered the factors under 18 U.S.C.
25 Section 3553(a). I believe the sentence that has been arrived

1 at is an appropriate one or reasonable one, not one that I
2 would necessarily impose without that understanding, but
3 nonetheless, a reasonable one.

4 And the sentence I will impose is sufficient but not
5 greater than that necessary to fulfill the purposes of
6 sentencing.

7 Let me just say that the facts surrounding the
8 defendant's activity with this gang prove beyond any doubt,
9 that once you do certain acts, you just can't put the genie
10 back in the bottle. There is no way to undo the hurt, the
11 harm, the injury, the loss that is created by senseless
12 violence. Whether you do it when you are 18 or whether you do
13 it when you are 62. It has the same consequences.

14 Unfortunately, 18-year olds have this, sometimes
15 have this belief in infallibility and have no concept of the
16 consequences to others of what they do.

17 And, this is the perfect example where two children
18 have to grow up without a father, because of a senseless act
19 of violence. And I really do sympathize with the family and
20 extend my heartfelt condolences to them.

21 This never ends. The hurt never ends. The loss
22 never ends. And I think the point was well made that-- by the
23 victims that you can explain to yourself and to your children
24 that people get sick and die, but how do you explain to your
25 children that your father was the victim of a senseless murder

1 at such an early age. It doesn't make any sense. You can't
2 explain something that makes no sense.

3 Having said all that, are you ready to be sentenced,
4 sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. On Count One of the
7 indictment, racketeering, I will sentence you to 180 months in
8 the custody of the Attorney General.

9 On Count Seven, the firearms charge, I sentence you
10 to a consecutive sentence of 120 months in the custody of the
11 Attorney General for a total of 300 months in the custody of
12 the Attorney General.

13 I also sentence you to five years of supervised
14 release with the following special conditions:

15 For a period of six months, you shall comply with
16 the curfew via electronic monitoring as directed by the U.S.
17 Probation Department, you will remain at your place of
18 residence from 7:00 p.m. to 7:00 a.m. every day.

19 Probation Department may designate another 12 hour
20 time period each day if the defendant's employment, education
21 or observance of religious services precludes the above
22 specified times.

23 The curfew via electronic monitoring shall commence
24 on the date approved by the Probation Department. During the
25 curfew period, the defendant shall wear an electronic

1 monitoring bracelet or similar tracking device and follow all
2 requirements and procedures for the curfew by electronic
3 monitoring by the Probation Department.

4 In addition, the defendant shall pay all costs,
5 including the price of electronic monitoring equipment to the
6 degree he is reasonably able. The defendant shall disclose
7 all financial information and documents to the Probation
8 Department to assess his ability to pay.

9 Also, the defendant shall participate in an
10 outpatient or inpatient drug treatment or detoxification
11 program approved by the Probation Department. If the
12 Probation Department deems such treatment is necessary at the
13 time of his supervised release.

14 The defendant shall contribute to the costs of such
15 treatment, not to exceed an amount determined reasonable by
16 the Probation Department's sliding scale for substance abuse
17 treatment services, and shall cooperate in securing any
18 applicable third party payment, such as insurance or Medicaid.

19 The defendant shall disclose all financial
20 information and documents to the Probation Department to
21 assess his ability to pay.

22 The defendant shall not consume any alcohol or other
23 intoxicants during and after treatment, unless granted a
24 prescription by a licensed physician and proof of the same is
25 provided to the Probation Department. The defendant shall

1 submit to testing during and after treatment, to ensure
2 abstinence from drugs and alcohol.

3 The defendant shall not possess a firearm,
4 ammunition or destructive device.

5 The defendant shall submit his person, property,
6 house, residence, vehicle, papers, computers, and other
7 electronic communications or data storage devices or media, or
8 office to search, conducted by the United States Probation
9 Officer. Failure to submit to a search maybe grounds for
10 revocation of release.

11 The defendant shall warn any other occupants that
12 the premises is subject to searches pursuant to this
13 condition.

14 Any officer may conduct a search pursuant to this
15 condition, only when reasonable suspicion exist that the
16 defendant violated the conditions of his supervision and the
17 areas to be searched contained evidence of this violation.
18 Any search must be conducted at a reasonable time and in a
19 reasonable manner.

20 Finally, the defendant shall not associate in
21 person, through mail, telephone or electronic communication
22 with any individual, with any affiliation to any organized
23 crime groups, gangs or other criminal enterprise pursuant but
24 not limited to, a prohibition list provided by the U.S.
25 Probation Department. Nor shall the defendant frequent any

1 establishment or other local identified by the United States
2 Probation Department as a location where these persons or
3 groups may meet.

4 There is a \$200 special assessment which is
5 mandatory.

6 I'm not imposing a fine, as the defendant does not
7 appear to have the ability to pay a fine.

8 You have the right to appeal your sentence to the
9 United States Court of Appeals for the Second Circuit. If you
10 believe the Court has not properly followed the law in
11 sentencing you.

12 I note that you have agreed not to appeal or
13 otherwise challenge your sentence if it is 300 months or below
14 and this sentence is 300 months. Therefore, you have a
15 contractual agreement with the government not to appeal your
16 sentence as I have imposed it.

17 However, if you still believe that the Court has not
18 properly followed the law in sentencing you, you should
19 discuss that with your attorney. Your time to appeal is
20 extremely limited, so, you should have that discussion at
21 once.

22 Do you understand your right to appeal?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay.

25 Are there open counts?

1 MS. MACE: Yes, there are and the government moves
2 to dismiss the open counts.

3 THE COURT: And the underlying indictment?

4 MS. MACE: And the underlying indictments.

5 THE COURT: The motion is granted.

6 Anything else from the government for today?

7 MS. MACE: No thank you.

8 THE COURT: Anything else from you, Mr. Branden?

9 MR. BRANDEN: Yes, three things.

10 I think that the probation report indicated properly
11 that Mr. Elainor has a pretty profound drug history. I think
12 he would benefit from a drug program while incarcerated, if
13 Your Honor would order that.

14 THE COURT: Would that have any effect on the length
15 of the sentence?

16 MS. MACE: Judge, I don't know the answer to that,
17 I'm sorry.

18 MR. BRANDEN: I don't know the answer to that. I
19 think he needs it. I think he would benefit from it.

20 THE COURT: Well, if it were to have an effect on
21 the length of the sentence, I'm not going to recommend it.
22 But, to the extent that it would not have an effect on the
23 length of the sentence, I would recommend it.

24 But my point is, that I think that 25 years is a
25 reasonable sentence, and I don't want to give the impression

1 that I have any-- that I encourage the defendant's sentence to
2 be truncated by virtue of being involved in the drug program.

3 MR. BRANDEN: It is not like I'm just bringing it
4 up, it is in the Probation report itself.

5 THE COURT: I understand that. I am not faulting
6 you in any way, shape or form.

7 MR. BRANDEN: I'm not trying to angle to get a
8 lesser term for him.

9 THE COURT: I understand that. But, I'm going to
10 make it very clear that he can apply for the drug program
11 but-- the Bureau of Prisons is at liberty to do whatever it
12 normally does. But, to the extent that the drug program would
13 result in a diminished sentence, I am opposed to it. So I
14 make that very clear to everybody.

15 I think the defendant should serve his entire
16 sentence. It is an agreed to sentence. I might have
17 sentenced him to a longer sentence if you hadn't agreed to the
18 terms of this. I could sentence him for up to life. Although
19 I don't think I would do that generally speaking in a
20 situation like this. I don't want to give the impression to
21 the Bureau of Prisons that I support a reduction in the
22 sentence based on some courses that he takes in the prison
23 system.

24 Anything else?

25 MR. BRANDEN: Yes.

1 Secondly and I don't know if this is necessary, but
2 it appears that it might be from the Probation report, Your
3 Honor should order, I am asking for this, concurrent
4 sentencing with his undischarged State term of five years.
5 The State Court is well aware of all the facts in this case
6 and already ordered its sentence to run concurrent to this
7 one.

8 But because of what's stated in the Probation
9 report, I think it is important for Your Honor to indicate
10 that it be run concurrently and not to leave it unsaid.

11 THE COURT: Does the government have a position?
12 You don't have to have to a position.

13 MS. MACE: May I have a moment?

14 THE COURT: Sure, you can have all the time you
15 want.

16 (Pause.)

17 MR. BRANDEN: They didn't in their addendum give the
18 Court such a reason.

19 MS. MACE: Your Honor, I'm not aware of any reason
20 either, but I take no position on that.

21 THE COURT: Based on the representation that the
22 State Court has indicated that the State sentence should run
23 concurrent with the Federal sentence, the Court agrees to
24 honor the State Court's decision, that the State sentence--
25 that the Federal Sentence run concurrent with the State

1 Sentence.

2 MR. BRANDEN: Thank you.

3 THE COURT: Based on that, we will put that in the
4 judgment as well.

5 MR. BRANDEN: Then finally.

6 THE COURT: Number three.

7 MR. BRANDEN: Finally, the defendant has some family
8 members here also. He would like to be as close to New York
9 City as possible. They are not rich people. It is difficult
10 for them to make a big trip to see him.

11 A recommendation that he be imprisoned as close to
12 New York City as possible would be helpful.

13 THE COURT: I think that-- let me explain why I'm
14 going to recommend this, although I cannot require it.

15 That is, that if this defendant is to have any hope
16 of resuming a law abiding life when he leaves prison, which
17 will be a long time from now. It really is necessary for his
18 family to be supportive of him and in contact with him.

19 The mistakes that the defendant made were at a very
20 early age, and as serious as they are, the last thing that
21 this Court wants is for him to resume such behavior when he is
22 released from prison.

23 So, on that basis, I place a burden on the
24 defendant's family to be supportive of him, to assist him, and
25 to help to provide him with the kind of guidance that he will

1 need in the years ahead, to avoid problems in prison and to
2 avoid problems after prison.

3 So, I recommend to the Bureau of Prisons, though I
4 cannot require, that the defendant be designated to an
5 appropriate facility in the New York metropolitan area.

6 Anything further from the defense?

7 MR. BRANDEN: No, Judge.

8 THE COURT: Anything further from the government?

9 MS. MACE: No, thank you, Your Honor.

10 THE COURT: All right. Thank you everyone.

11 Thank you Marshals.

12 THE DEFENDANT: Thank you, Judge.

13 (Matter concluded.)

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17 I CERTIFY that the foregoing
18 is a correct transcript from
the record of proceedings
in the above entitled matter.

19 s/Richard W. Barry

20 Richard W. Barry, RPR

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